

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

JAMES E. GRAHAM II; DENNIS ADKINS
ROGER WRISTON; AND DAVID B. POLK;
On behalf of themselves and
Others similarly situated; and
UNITED MINE WORKERS OF AMERICA,
INTERNATIONAL UNION

Plaintiffs,

v.

Civil Action No. 1:19-cv-00597

JUSTICE ENERGY CO. INC.;
KEYSTONE SERVICE INDUSTRIES, INC.
BLUESTONE COAL CORPORATION;
DOUBLE-BONUS COAL CO.; AND
SOUTHERN COAL CORPORATION,

Defendants.

PLAINTIFFS' NOTICE OF MOTION FOR CONTEMPT

1. **COMES NOW** Plaintiffs, James E. Graham II; Dennis Adkins, Roger Wriston; and David B. Polk; on behalf of themselves and others similarly situated (“the retiree Plaintiffs”) and the United Mine Workers of America, International Union (“UMWA”) pursuant to Fed. R. Civ. P. Rule 7(b) and Rule 70(e), and L.R. Civ. P. Rule 4.1.1 and Rule 7.1, and hereby move this Court for an Order of Civil Contempt which is occasioned by the failure of Defendants Justice Energy Co., Inc.; Keystone Service Industries, Inc., Bluestone Coal Corporation; Double-Bonus Coal Co.; and Southern Coal Corporation to comply with the Order, Consent Order, and Permanent Injunction issued on June 3, 2021 in the above-referenced matter (ECF No. 55).

2. On January 21, 2020 this Court issued a Consent Order (ECF No. 22) memorializing the parties' agreement to comply with the 2016 National Bituminous Coal Wage

Agreement ("NBCWA") and, in particular, with Article XX of the NBCWA and related Memoranda of Understanding ("MOUs"), to provide uninterrupted health care and prescription drug coverage to eligible retirees and their dependents.

3. On June 3, 2021 this Court granted the parties' joint Motion for Entry of Consent Judgment and Permanent Injunction and entered an Order directing Defendants to immediately and permanently comply with Article XX of the 2016 NBCWA and related MOUs to provide uninterrupted health care and prescription drug coverage to eligible retirees and their eligible dependents (ECF No. 55, ¶ 1). The June 3, 2021 Order further directed Defendants not to terminate or modify retiree healthcare and prescription drug coverage in a manner inconsistent with the terms of the 2016 NBCWA and related MOUs, or in a manner inconsistent with the terms of a successor agreement to the 2016 NBCWA and MOUs (ECF No. 55, ¶¶ 1, 2). The 2016 NBCWA and related MOUs have remained in effect at all times relevant hereto. (See, Declaration of T. J. Baker, attached hereto as Exhibit No. 1, ¶ 3).

4. Pursuant to its June 3, 2021 Order this Court concluded the action, but retained jurisdiction for the purpose of issuing additional orders and rulings necessary to enforce the Consent Judgment and Permanent Injunction. In accordance therewith, Plaintiffs come now before this Court and seek an Order of Contempt against Defendants for their failure to comply with the Court's June 3, 2021 Order caused by their failure to provide uninterrupted health care and prescription drug coverage to eligible retirees and their eligible dependents. (ECF No. 55, ¶¶ 3, 4).

5. Pursuant to Fed. R. Civ. P. Rule 10(c) (Form of Pleadings; Adoption by Reference), Plaintiffs adopt by reference the statements set forth in their Complaint filed in this matter, as well

as the agreement contained in the January 21, 2020 Consent Order and the June 3, 2021 Order, Consent Order, and Permanent Injunction.

6. As provided more fully in the Declaration of UMWA attorney T.J. Baker attached hereto as Exhibit No. 1, the Declaration of Justice Energy Inc. retiree James E. Graham II attached hereto as Exhibit No. 2, the Declaration of Justice Energy Inc. retiree Jimmy C. Lester attached hereto as Exhibit No. 3, the Declaration of Keystone Service Inc. retiree Andrew G. Lafferty attached hereto as Exhibit No. 4, and the Declaration of Bluestone Coal Corp. retiree Johnny R. Connor attached hereto as Exhibit No. 5, and as set forth in Plaintiffs' Memorandum in Support of its Motion, since the issuance of the June 3, 2021 Consent Order (ECF No. 55), Defendants have knowingly and willfully failed to consistently comply with the Court's Orders as they have periodically failed to provide timely prescription drug coverage as required by and set forth in the Employee Benefit Plan incorporated of the NBCWA and related MOUs, causing the individual retiree Plaintiffs and other retirees similarly situated to delay in filling prescribed medications, in violation of said Orders. This failure of Defendants to comply with the June 3, 2021 Order, Consent Order, and Permanent Injunction constitutes civil contempt within the meaning of 18 U.S.C. § 401.

ACCORDINGLY, pursuant to Fed. R. Civ. P. Rule 7(b) and Rule 70(e), and L.R. Civ. P. 4.1.1, for the reasons set forth in this Motion, the Memorandum in Support of this Motion, and the Declarations attached to this Motion, Plaintiffs hereby **MOVE** that this Court 1) Enter an **ORDER** finding Defendants in contempt of Court for their failure to comply with its Order, Consent Order, and Permanent Injunction (ECF No. 55); 2) Award damages in the amount of any out-of-pocket expenses incurred by the retirees and their eligible dependents during the time during which the prescription drug coverage was terminated; 3) Direct Defendants to pay Plaintiffs' reasonable

attorneys' fees necessitated by this contempt proceeding, 4) Issue such sanctions as the Court deems appropriate to coerce obedience and compensate Plaintiffs for the losses they have sustained, and 5) Enter all other relief deemed just and proper.

DATE: March 31, 2022

Respectfully Submitted,

/s/ Kevin F. Fagan

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CERTIFICATE OF SERVICE

I hereby certify that on this **31st day of March, 2022**, I electronically filed the foregoing **PLAINTIFFS' NOTICE OF MOTION FOR CONTEMPT** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to CM/ECF participants. All others were served via e-mail and by 1st class U.S. mail. I have also served the foregoing document on the Defendants via U.S. Certified Mail at the following address:

Stephen W. Ball
Bluestone Resources, Inc.
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White Sulphur Springs, WV 24986

/s/ Kevin F. Fagan
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